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TITLE 329 SOLID WASTE MANAGEMENT DIVISION

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**Proposed Rule**  
LSA Document #13-272

## DIGEST

Amends [329 IAC 9-1-38.5](#) and adds [329 IAC 9-1-15.1](#) and [329 IAC 9-1-15.2](#) concerning definitions. Adds [329 IAC 9-4.5-4](#) through [329 IAC 9-4.5-11](#) concerning the underground storage tank (UST) delivery prohibition program. Repeals [329 IAC 9-1-10.7](#), [329 IAC 9-1-19.5](#), [329 IAC 9-4.5-1](#), [329 IAC 9-4.5-2](#), and [329 IAC 9-4.5-3](#). Effective 30 days after filing with the Publisher.

**HISTORY**

First Notice of Comment Period: June 26, 2013, Indiana Register (DIN: [20130626-IR-329130272FNA](#)).  
Second Notice of Comment Period: April 23, 2014, Indiana Register (DIN: [20140423-IR-329130272SNA](#)).  
Notice of First Hearing: April 23, 2014, Indiana Register (DIN: [20140423-IR-329130272PHA](#)).  
Date of First Hearing: June 11, 2014.

**PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)**

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#), until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on April 23, 2014 at DIN: [20140423-IR-329130272SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

**SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

No comments were received during the second comment period.

**SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On June 11, 2014, the environmental rules board (board) conducted the first public hearing concerning the development of amendments to [329 IAC 9-1](#) and [329 IAC 9-4.5](#) concerning the Underground Storage Tank (UST) Delivery Prohibition Program. No comments were made at the first hearing.

[329 IAC 9-1-10.7](#); [329 IAC 9-1-15.1](#); [329 IAC 9-1-15.2](#); [329 IAC 9-1-19.5](#); [329 IAC 9-1-38.5](#); [329 IAC 9-4.5-1](#); [329 IAC 9-4.5-2](#); [329 IAC 9-4.5-3](#); [329 IAC 9-4.5-4](#); [329 IAC 9-4.5-5](#); [329 IAC 9-4.5-6](#); [329 IAC 9-4.5-7](#); [329 IAC 9-4.5-8](#); [329 IAC 9-4.5-9](#); [329 IAC 9-4.5-10](#); [329 IAC 9-4.5-11](#)

SECTION 1. [329 IAC 9-1-15.1](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-1-15.1](#) "Delivery prohibition" defined**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23-1-4](#); [IC 13-23-12-1](#)

Sec. 15.1. "Delivery prohibition" means the commissioner:

- (1) determined a UST to be ineligible under [IC 13-23-1-4](#); and
- (2) issued a temporary order prohibiting the owner or operator of the ineligible UST from allowing a regulated substance to be:
  - (A) delivered;
  - (B) deposited; or
  - (C) accepted.

(Solid Waste Management Division; [329 IAC 9-1-15.1](#))

SECTION 2. [329 IAC 9-1-15.2](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-1-15.2](#) "Department" defined**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#)

Affected: [IC 13-23](#)

**Sec. 15.2. "Department" means the Indiana department of environmental management.**

(Solid Waste Management Division; [329 IAC 9-1-15.2](#))

SECTION 3. [329 IAC 9-1-38.5](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 9-1-38.5](#) "Red tag" defined**

**Authority:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

**Affected:** [IC 13-13-1-1](#); [IC 13-23](#)

Sec. 38.5. "Red tag" means ~~the~~ **a tag, device, or mechanism**, such as a tamper-resistant strap, fill pipe bag, **numbered zip tie**, or any combination thereof, that **clearly** identifies an underground storage tank ~~system~~ as ~~ineligible to receive a regulated substance~~ **being under delivery prohibition** or the act of ~~applying such~~ **attaching the tag, device, or mechanism. The red tag shall:**

- (1) indicate the UST is prohibited from receiving a regulated substance;**
- (2) be tamper resistant; and**
- (3) state "Do Not Fill" in bold face type.**

(Solid Waste Management Division; [329 IAC 9-1-38.5](#); filed May 7, 2010, 10:02 a.m.: [20100602-IR-329070468FRA](#))

SECTION 4. [329 IAC 9-4.5-4](#) IS ADDED TO READ AS FOLLOWS:

**Rule 4.5. Delivery Prohibition Program**

**[329 IAC 9-4.5-4](#) Applicability**

**Authority:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1](#); 42 U.S.C. 6991

**Affected:** [IC 13-13-1-1](#); [IC 13-23-1-4](#); [IC 13-23-12-1](#)

**Sec. 4. This rule applies to owners and operators of a UST determined to be ineligible by the commissioner under [IC 13-23-1-4](#) and this rule.**

(Solid Waste Management Division; [329 IAC 9-4.5-4](#))

SECTION 5. [329 IAC 9-4.5-5](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-4.5-5](#) Ineligibility**

**Authority:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1](#); 42 U.S.C. 6991

**Affected:** [IC 13-13-1-1](#); [IC 13-23-12-1](#)

**Sec. 5. The commissioner may determine a UST to be ineligible if one (1) of the following conditions are met:**

- (1) An inspection shows the following required equipment is not installed:**
  - (A) Corrosion protection.**
  - (B) Leak detection.**
  - (C) Overfill protection.**
  - (D) Spill prevention.**
- (2) The owner or operator fails to:**
  - (A) properly operate or maintain equipment for:**
    - (i) corrosion protection;**
    - (ii) leak detection;**
    - (iii) overfill protection; or**
    - (iv) spill prevention;**
  - (B) register a UST that holds petroleum under [329 IAC 9-2-2](#); or**
  - (C) pay annual registration fees due under [IC 13-23-12](#).**

(Solid Waste Management Division; [329 IAC 9-4.5-5](#))

SECTION 6. [329 IAC 9-4.5-6](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-4.5-6](#) Notification**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1](#); [IC 13-23-14-4](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23-12-1](#)

**Sec. 6. (a) Notification to the UST owner or operator of ineligibility shall be provided before delivery prohibition.**

**(b) Notification shall:**

**(1) be delivered:**

**(A) in person; or**

**(B) by certified mail with return receipt;**

**(2) be delivered to the:**

**(A) address of the owner or operator provided to the department on the form required by [329 IAC 9-2-2](#);**

**(B) registered agent if the owner or operator is a business; or**

**(C) facility where the UST is located; and**

**(3) provide:**

**(A) a list of the violations that caused ineligibility;**

**(B) actions the owner or operator must take for the UST to be reclassified from ineligible to eligible; and**

**(C) the date delivery prohibition shall be imposed.**

**(c) If a UST is determined to be ineligible under section 5(1) of this rule, the commissioner may determine an immediate order of delivery prohibition, described in section 8 of this rule, be issued and a red tag attached to the UST. The delivery prohibition order may serve as notification of ineligibility.**

**(d) If a UST is determined to be ineligible under section 5(2) of this rule, the commissioner may determine, after providing a thirty (30) day warning period described in section 7 of this rule, to issue a delivery prohibition order.**

*(Solid Waste Management Division; [329 IAC 9-4.5-6](#))*

SECTION 7. [329 IAC 9-4.5-7](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-4.5-7](#) Thirty (30) day warning period**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23-12-1](#)

**Sec. 7. (a) The commissioner shall provide for a thirty (30) day warning period for any UST determined to be ineligible under section 5(2) of this rule prior to issuing a delivery prohibition order described under section 8 of this rule.**

**(b) A UST that is not reclassified as eligible to receive a regulated substance, under section 9 of this rule, within thirty (30) days of receiving a warning under this section may receive a delivery prohibition order under section 8 of this rule.**

*(Solid Waste Management Division; [329 IAC 9-4.5-7](#))*

SECTION 8. [329 IAC 9-4.5-8](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-4.5-8](#) Delivery prohibition order**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23-1-4](#); [IC 13-23-14-4](#)

**Sec. 8. (a)** After notification of ineligibility under [IC 13-23-1-4](#) and this rule, the commissioner may prohibit delivery. A delivery prohibition order shall be issued in the form of a temporary emergency order, described in [IC 4-21.5-4](#).

**(b)** When a UST is under a delivery prohibition order, the owner or operator of the UST must notify any person who has delivered or is scheduled to deliver a regulated substance to the UST of the delivery prohibition.

**(c)** When the commissioner issues a delivery prohibition order, a red tag shall be attached to the UST.

**(d)** Unless authorized by the commissioner, a red tag shall not be:

- (1) removed;
- (2) defaced;
- (3) altered; or
- (4) otherwise tampered with.

**(e)** Violators of subsection (d) shall be assessed penalties under [IC 13-23-14-4](#).

*(Solid Waste Management Division; [329 IAC 9-4.5-8](#))*

SECTION 9. [329 IAC 9-4.5-9](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-4.5-9](#) Reclassification**

**Authority:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1](#); 42 U.S.C. 6991

**Affected:** [IC 13-13-1-1](#); [IC 13-23-3](#); [IC 13-23-12-1](#)

**Sec. 9. (a)** A UST shall be reclassified from ineligible to receive a regulated substance to eligible if the:

- (1) owner or operator notifies the department that all corrective actions listed in the notification have been taken; and
- (2) department determines that the violations were corrected by:
  - (A) reviewing and approving the provided documentation; or
  - (B) reinspecting the UST.

**(b)** The UST owner or operator must provide applicable documentation to the department as follows to show the violations were corrected:

- (1) UST test results performed by a UST tester, who is certified under [IC 13-23-3](#).
- (2) Proof of installation of equipment by a UST installer, who is certified under [IC 13-23-3](#).
- (3) Proof of payment of UST fees due under [IC 13-23-12](#).
- (4) Proof of submission of a complete registration or notification form described in [329 IAC 9-2-2](#).
- (5) Any other documentation the department determines is necessary to show the owner or operator corrected the violations described in the notice of ineligibility.

**(c)** The commissioner shall issue a written determination of eligibility upon:

- (1) review and approval of all required documentation; and
- (2) an inspection of the UST, if applicable.

**(d)** The written determination shall include the following:

- (1) Identification of the UST that is reclassified.
- (2) A statement that all the violations described in the notification have been corrected and approved.
- (3) A statement that the UST is eligible to receive a regulated substance.
- (4) Authorization for the owner or operator to remove the identified red tag, if applicable.
- (5) Instructions for removing and returning the red tag, if applicable.

**(e)** The written determination shall be delivered by one (1) of the following:

- (1) Facsimile.
- (2) Electronic mail.

(3) Certified mail.

(4) Other appropriate means.

(Solid Waste Management Division; [329 IAC 9-4.5-9](#))

SECTION 10. [329 IAC 9-4.5-10](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-4.5-10](#) Special circumstances**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23-12-1](#)

**Sec. 10. (a)** The commissioner may defer a delivery prohibition order to an ineligible UST that holds motor fuel if the prohibition would jeopardize the availability of, or access to, motor fuel in any rural and remote area unless an urgent threat to public health, as determined by the commissioner, exists.

**(b)** The commissioner may only defer a delivery prohibition order for up to one hundred eighty (180) days after determining the UST is ineligible.

**(c)** A UST is in a rural and remote area if there are no other USTs that contain similar motor fuel for sale within thirty (30) miles by road from the ineligible UST. A motor fuel is similar to another motor fuel if it can run the same motor.

**(d)** The commissioner may allow delivery of a regulated substance to a UST under delivery prohibition if:

**(1)** a certain volume in the UST is necessary to test or calibrate the system and the delivery is only of the amount necessary to conduct the test or calibration; or

**(2)** the UST is used to fuel an emergency generator that:

**(A)** provides a power supply in the event of a commercial power failure;

**(B)** stores petroleum; and

**(C)** is used solely in connection with:

**(i)** an emergency system;

**(ii)** a legally required standby system; or

**(iii)** an optional standby system.

**(e)** If the commissioner determines a UST is subject to the special circumstances described in this section, a written decision shall be provided to the owner or operator following receipt of a request for the finding and evidence sufficient to allow the commissioner to make this determination.

(Solid Waste Management Division; [329 IAC 9-4.5-10](#))

SECTION 11. [329 IAC 9-4.5-11](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-4.5-11](#) Transfer of ownership**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23-1-4](#); [IC 13-23-12-1](#)

**Sec. 11. (a)** If an owner who has received notice of ineligibility under section 6 of this rule transfers ownership of the ineligible UST to a new owner, the transferring owner shall provide notification as follows:

**(1)** The transferring owner shall notify IDEM within thirty (30) days of the transfer that a transfer of ownership has occurred. The following information shall be included:

**(A)** The name of the new owner.

**(B)** The address of the new owner.

**(C)** The date of the transfer.

**(2)** The transferring owner shall notify the new owner that the UST is ineligible.

**(b) In accordance with [IC 13-23-1-4\(c\)](#), the new owner must complete the corrective actions required to comply with an order issued by the commissioner to the previous owner.**

*(Solid Waste Management Division; [329 IAC 9-4.5-11](#))*

SECTION 12. THE FOLLOWING ARE REPEALED: [329 IAC 9-1-10.7](#); [329 IAC 9-1-19.5](#); [329 IAC 9-4.5-1](#); [329 IAC 9-4.5-2](#); [329 IAC 9-4.5-3](#).

[Notice of Public Hearing](#)

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